

the Bureau, in accordance with any requirement of such permit or this paragraph, knowing such representation to be false, or makes such representation in reckless disregard of the truth.

(b) The authorized officer in his discretion may elect to terminate any permit or right-of-way issued under this paragraph, if the permittee shall fail to comply with any of the provisions of such regulations or make defaults in the performance or obligation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the authorized officer.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to this paragraph, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under this paragraph, to submit to and be bound by arbitration pursuant to §§2812.4-1, 2812.4-3, and 2812.4-4.

#### **§2812.8-2 Remedies for violations by licensee.**

(a) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract or a cooperative agreement with the United States which will require the licensee to comply with all the applicable provisions of this paragraph, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the authorized officer will take such action as may be appropriate under the provisions of the timber sale contract or cooperative agreement.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract or cooperative agreement pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the authorized officer, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract or the cooperative agreement. In such event the permittee shall be bound by the decision of the authorized officer, subject, however, to a right of appeal pursuant to §2812.9 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative, a permittee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

#### **§2812.8-3 Disposition of property on termination of permit.**

Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed 6 months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

#### **§2812.9 Appeals.**

An appeal pursuant to part 4 of 43 CFR Subtitle A, may be taken from any final decision of the authorized officer, to the Board of Land Appeals, Office of the Secretary.

[41 FR 29123, July 15, 1976]

## **PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT**

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2886.16 Under what conditions may BLM order an immediate temporary suspension of my activities?

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2886.18 How will I know that BLM intends to suspend or terminate my grant or TUP?

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AUTHORITY: 30 U.S.C. 185 and 189.

SOURCE: 70 FR 21078, Apr. 22, 2005, unless otherwise noted.

### Subpart 2881—General Information

#### § 2881.2 What is the objective of BLM's right-of-way program?

It is BLM's objective to grant rights-of-way under the regulations in this part to any qualified individual, business, or government entity and to direct and control the use of rights-of-way on public lands in a manner that:

(a) Protects the natural resources associated with Federal lands and adjacent lands, whether private or administered by a government entity;

(b) Prevents unnecessary or undue degradation to public lands;

(c) Promotes the use of rights-of-way in common considering engineering and technological compatibility, national security, and land use plans; and

(d) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with state and local governments, interested individuals, and appropriate quasi-public entities.

#### § 2881.5 What acronyms and terms are used in the regulations in this part?

(a) *Acronyms.* Unless an acronym is listed in this section, the acronyms

listed in part 2800 of this chapter apply to this part. As used in this part:

*MLA* means the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

*TAPS* means the Trans-Alaska Oil Pipeline System.

*TUP* means a temporary use permit.

(b) *Terms.* Unless a term is defined in this part, the defined terms in part 2800 of this chapter apply to this part. As used in this part, the term:

*Act* means section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

*Actual costs* means the financial measure of resources the Federal government expends or uses in processing a right-of-way application or in monitoring the construction, operation, and termination of a facility authorized by a grant or permit. Actual costs include both direct and indirect costs, exclusive of management overhead costs.

*Casual use* means activities ordinarily resulting in no or negligible disturbance of the public lands, resources, or improvements. Examples of casual use include: Surveying, marking routes, and collecting data to prepare applications for grants or TUPs.

*Facility* means an improvement or structure, whether existing or planned, that is, or would be, owned and controlled by the grant or TUP holder within the right-of-way or TUP area.

*Federal lands* means all lands owned by the United States, except lands:

(1) In the National Park System;

(2) Held in trust for an Indian or Indian tribe; or

(3) On the Outer Continental Shelf.

*Grant* means any authorization or instrument BLM issues under section 28 of the Mineral Leasing Act, 30 U.S.C. 185, authorizing a nonpossessory, non-exclusive right to use Federal lands to construct, operate, maintain, or terminate a pipeline. The term includes those authorizations and instruments BLM and its predecessors issued for like purposes before November 16, 1973, under then existing statutory authority. It does not include authorizations issued under FLPMA (43 U.S.C. 1761 *et seq.*).

*Monitoring* means those actions, subject to § 2886.11 of this part, that the Federal government performs to ensure

compliance with the terms, conditions, and stipulations of a grant or TUP.

(1) For Monitoring Categories 1 through 4, the actions include inspecting construction, operation, maintenance, and termination of permanent or temporary facilities and protection and rehabilitation activities until the holder completes rehabilitation of the right-of-way or TUP area and BLM approves it;

(2) For Monitoring Category 5 (Master Agreements), those actions agreed to in the Master Agreement; and

(3) For Monitoring Category 6, those actions agreed to between BLM and the applicant before BLM issues the grant or TUP.

*Oil or gas* means oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from them.

*Pipeline* means a line crossing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on its oil and gas lease.

*Pipeline system* means all facilities, whether or not located on Federal lands, used by a grant holder in connection with the construction, operation, maintenance, or termination of a pipeline.

*Production facilities* means a lessee's or lease operator's pipes and equipment used on its oil and gas lease to aid in extracting, processing, and storing oil or gas. The term includes:

(1) Storage tanks and processing equipment;

(2) Gathering lines upstream from such tanks and equipment, or in the case of gas, upstream from the point of delivery; and

(3) Pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

*Related facilities* means those structures, devices, improvements, and sites, located on Federal lands, which may or may not be connected or contiguous to the pipeline, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline, such as:

(1) Supporting structures;

(2) Airstrips;

(3) Roads;

(4) Campsites;

(5) Pump stations, including associated heliports, structures, yards, and fences;

(6) Valves and other control devices;

(7) Surge and storage tanks;

(8) Bridges;

(9) Monitoring and communication devices and structures housing them;

(10) Terminals, including structures, yards, docks, fences, and storage tank facilities;

(11) Retaining walls, berms, dikes, ditches, cuts and fills; and

(12) Structures and areas for storing supplies and equipment.

*Right-of-way* means the Federal lands BLM authorizes a holder to use or occupy under a grant.

*Substantial deviation* means a change in the authorized location or use which requires:

(1) Construction or use outside the boundaries of the right-of-way or TUP area; or

(2) Any change from, or modification of, the authorized use. Examples of substantial deviation include: Adding equipment, overhead or underground lines, pipelines, structures, or other facilities not included in the original grant or TUP.

*Temporary use permit or TUP* means a document BLM issues under 30 U.S.C. 185 that is a revocable, nonpossessory privilege to use specified Federal lands in the vicinity of and in connection with a right-of-way, to construct, operate, maintain, or terminate a pipeline or to protect the environment or public safety. A TUP does not convey any interest in land.

*Third party* means any person or entity other than BLM, the applicant, or the holder of a right-of-way authorization.

#### § 2881.7 Scope.

(a) *What do these regulations apply to?* The regulations in this part apply to:

(1) Issuing grants and TUPs for pipelines to transport oil or gas, and administering, amending, assigning, renewing, and terminating them;

(2) All grants and permits BLM and its predecessors previously issued under section 28 of the Act; and

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(3) Pipeline systems, or parts thereof, within a Federal oil and gas lease owned by:

(i) A party who is not the lessee or lease operator; or

(ii) The lessee or lease operator which are downstream from a custody transfer metering device.

(b) *What don't these regulations apply to?* The regulations in this part do not apply to:

(1) Production facilities on an oil and gas lease which operate for the benefit of the lease. The lease authorizes these production facilities;

(2) Pipelines crossing Federal lands under the jurisdiction of a single Federal department or agency other than BLM, including bureaus and agencies within the Department of the Interior;

(3) Authorizations BLM issues to Federal agencies for oil or gas transportation under § 2801.6 of this chapter; or

(4) Authorizations BLM issues under Title V of the Federal Land Policy and Management Act of 1976 (*see* part 2800 of this chapter).

(c) Notwithstanding the definition of “grant” in section 2881.5 of this subpart, the regulations in this part apply, consistent with 43 U.S.C. 1652(c), to any authorization issued by the Secretary of the Interior or his or her delegate under 43 U.S.C. 1652(b) for the Trans-Alaska Oil Pipeline System.

### § 2881.9 Severability.

If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected.

### § 2881.10 How do I appeal a BLM decision issued under the regulations in this part?

(a) You may appeal a BLM decision issued under the regulations in this part in accordance with part 4 of this title.

(b) All BLM decisions under this part remain in effect pending appeal unless the Secretary of the Interior rules otherwise, or as noted in this part. You may petition for a stay of a BLM decision under this part with the Office of

Hearings and Appeals, Department of the Interior. Unless otherwise noted in this part, BLM will take no action on your application while your appeal is pending.

### § 2881.11 When do I need a grant from BLM for an oil and gas pipeline?

You must have a BLM grant under 30 U.S.C. 185 for an oil or gas pipeline or related facility to cross Federal lands under:

(a) BLM's jurisdiction; or

(b) The jurisdiction of two or more Federal agencies.

### § 2881.12 When do I need a TUP for an oil and gas pipeline?

You must obtain a TUP from BLM when you require temporary use of more land than your grant authorizes in order to construct, operate, maintain, or terminate your pipeline, or to protect the environment or public safety.

## Subpart 2882—Lands Available for MLA Grants and TUPs

### § 2882.10 What lands are available for grants or TUPs?

(a) For lands BLM exclusively manages, we use the same criteria to determine whether lands are available for grants or TUPs as we do to determine whether lands are available for FLPMA grants (*see* subpart 2802 of this chapter).

(b) BLM may require common use of a right-of-way and may restrict new grants to existing right-of-way corridors where safety and other considerations allow. Generally, BLM land use plans designate right-of-way corridors.

(c) Where a proposed oil or gas right-of-way involves lands managed by two or more Federal agencies, *see* § 2884.26 of this part.

## Subpart 2883—Qualifications for Holding MLA Grants and TUPs

### § 2883.10 Who may hold a grant or TUP?

To hold a grant or TUP under these regulations, you must be:

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(a)(1) A United States citizen, an association of such citizens, or a corporation, partnership, association, or similar business entity organized under the laws of the United States, or of any state therein; or

(2) A state or local government; and

(b) Financially and technically able to construct, operate, maintain, and terminate the proposed facilities.

### § 2883.11 Who may not hold a grant or TUP?

Aliens may not acquire or hold any direct or indirect interest in grants or TUPs, except that they may own or control stock in corporations holding grants or TUPs if the laws of their country do not deny similar or like privileges to citizens of the United States.

### § 2883.12 How do I prove I am qualified to hold a grant or TUP?

(a) If you are a private individual, BLM requires no proof of citizenship with your application;

(b) If you are a partnership, corporation, association, or other business entity, submit the following information, as applicable, in your application:

(1) Copies of the formal documents creating the business entity, such as articles of incorporation, and including the corporate bylaws;

(2) Evidence that the party signing the application has the authority to bind the applicant;

(3) The name, address, and citizenship of each participant (*e.g.*, partner, associate, or other) in the business entity;

(4) The name, address, and citizenship of each shareholder owning 3 percent or more of each class of shares, and the number and percentage of any class of voting shares of the business entity which such shareholder is authorized to vote;

(5) The name and address of each affiliate of the business entity;

(6) The number of shares and the percentage of any class of voting stock owned by the business entity, directly or indirectly, in any affiliate controlled by the business entity; and

(7) The number of shares and the percentage of any class of voting stock owned by an affiliate, directly or indi-

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rectly, in the business entity controlled by the affiliate.

(c) If you have already supplied this information to BLM and the information remains accurate, you only need to reference the existing or previous BLM serial number under which it is filed.

### § 2883.13 What happens if BLM issues me a grant or TUP and later determines that I am not qualified to hold it?

If BLM issues you a grant or TUP, and later determines that you are not qualified to hold it, BLM will terminate your grant or TUP under 30 U.S.C. 185(o). You may appeal this decision under § 2881.10 of this part.

### § 2883.14 What happens to my application, grant, or TUP if I die?

(a) If an applicant or grant or TUP holder dies, any inheritable interest in the application, grant, or TUP will be distributed under state law.

(b) If the distributee of a grant or TUP is not qualified to hold a grant or TUP under § 2883.10 of this subpart, BLM will recognize the distributee as grant or TUP holder and allow the distributee to hold its interest in the grant or TUP for up to two years. During that period, the distributee must either become qualified or divest itself of the interest.

## Subpart 2884—Applying for MLA Grants or TUPs

### § 2884.10 What should I do before I file my application?

(a) When you determine that a proposed oil and gas pipeline system would cross Federal lands under BLM jurisdiction, or under the jurisdiction of two or more Federal agencies, you should notify BLM.

(b) Before filing an application with BLM, we encourage you to make an appointment for a preapplication meeting with the appropriate personnel in the BLM field office nearest the lands you seek to use. During the preapplication meeting BLM can:

(1) Identify potential routing and other constraints;

(2) Determine whether or not the lands are located within a designated or existing right-of-way corridor;

(3) Tentatively schedule the processing of your proposed application;

(4) Provide you information about qualifications for holding grants and TUPs, and inform you of your financial obligations, such as processing and monitoring costs and rents; and

(5) Identify any work which will require obtaining one or more TUPs.

(c) BLM may share this information with Federal, state, tribal, and local government agencies to ensure that these agencies are aware of any authorizations you may need from them.

(d) BLM will keep confidential any information in your application that you mark as “confidential” or “proprietary” to the extent allowed by law.

**§ 2884.11 What information must I submit in my application?**

(a) File your application on Form SF-299 or as part of an Application for Permit to Drill or Reenter (BLM Form 3160-3) or Sundry Notice and Report on Wells (BLM Form 3160-5), available from any BLM office. Provide a complete description of the project, including:

(1) The exact diameters of the pipes and locations of the pipelines;

(2) Proposed construction and reclamation techniques; and

(3) The estimated life of the facility.

(b) File with BLM copies of any applications you file with other Federal agencies, such as the Federal Energy Regulatory Commission (*see* 18 CFR chapter I), for licenses, certificates, or other authorities involving the right-of-way.

(c) BLM may ask you to submit additional information beyond that required in the form to assist us in processing your application. This information may include:

(1) A list of any Federal and state approvals required for the proposal;

(2) A description of alternative route(s) and mode(s) you considered when developing the proposal;

(3) Copies of, or reference to, all similar applications or grants you have submitted, currently hold, or have held in the past;

(4) A statement of the need and economic feasibility of the proposed project;

(5) The estimated schedule for constructing, operating, maintaining, and terminating the project (a Plan of Development);

(6) A map of the project, showing its proposed location and showing existing facilities adjacent to the proposal;

(7) A statement certifying that you are of legal age and authorized to do business in the state(s) where the right-of-way would be located, and that you have submitted correct information to the best of your knowledge;

(8) A statement of the environmental, social, and economic effects of the proposal;

(9) A statement of your financial and technical capability to construct, operate, maintain, and terminate the project;

(10) Proof that you are a United States citizen; and

(11) Any other information BLM considers necessary to process your application.

(d) Before BLM reviews your application for a grant, grant amendment, or grant renewal, you must submit the following information and material to ensure that the facilities will be constructed, operated, and maintained as common carriers under 30 U.S.C. 185(r):

(1) Conditions for, and agreements among, owners or operators to add pumping facilities and looping, or otherwise to increase the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;

(2) Conditions for adding or abandoning intake, offtake, or storage points or facilities; and

(3) Minimum shipment or purchase tenders.

(e) If conditions or information affecting your application change, promptly notify BLM and submit to BLM in writing the necessary changes to your application. BLM may deny your application if you fail to do so.

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**§ 2884.12 What is the processing fee for a grant or TUP application?**

(a) You must pay a fee with the application to cover the costs to the Federal Government of processing your application before the Federal Government incurs them. The fees for Processing Categories 1 through 4 (see paragraph (b) of this section) are one-time

fees and are not refundable. The fees are categorized based on an estimate of the amount of time that the Federal Government will expend to process your application and issue a decision granting or denying the application.

(b) There is no processing fee if work is estimated to take one hour or less. Processing fees are based on categories. These categories and fees for 2005 are:

**2005 PROCESSING FEE SCHEDULE**

Processing category	Federal work hours involved	Processing fee per application as of June 21, 2005. To be adjusted annually for changes in the IPD–GDP. See paragraph (c) of this section for update information
(1) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs.	Estimated Federal work hours are >1 ≤8.	\$97.
(2) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs.	Estimated Federal work hours are >8 ≤24.	\$343.
(3) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs.	Estimated Federal work hours are >24 ≤36.	\$644.
(4) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs.	Estimated Federal work hours are >36 ≤50.	\$923.
(5) Master Agreements. ....	Varies .....	As specified in the Agreement.
(6) Applications for new grants or TUPs, assignments, renewals, and amendments to existing grants or TUPs.	Estimated Federal work hours are >50.	Actual costs (see § 2884.17 of this part).

(c) BLM will revise paragraph (b) of this section to update the processing fees for Categories 1 through 4 in the schedule each calendar year, based on the previous year's change in the IPD–GDP, as measured second quarter to second quarter. BLM will round these changes to the nearest dollar. BLM will update Category 5 processing fees as specified in the Master Agreement. You also may obtain a copy of the current schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000LS, Washington, DC 20240. BLM also posts the current schedule on the BLM Homepage on the Internet at <http://www.blm.gov>.

(d) After an initial review of your application, BLM will notify you of the processing category into which your application fits. You must then submit the appropriate payment for that category before BLM begins processing your application. Your signature on a cost recovery Master Agreement constitutes your agreement with the processing category decision. If you dis-

agree with the category that BLM has determined for your application, you may appeal the decision under § 2881.10 of this part. If you paid the processing fee and you appeal a Processing Category 1 through 4 or a Processing Category 6 determination to IBLA, BLM will process your application while the appeal is pending. If IBLA finds in your favor, you will receive a refund or adjustment of your processing fee.

(e) In processing your application, BLM may determine at any time that the application requires preparing an EIS. If this occurs, BLM will send you a decision changing your processing category to Processing Category 6. You may appeal the decision under § 2881.10 of this part.

(f) If you hold an authorization relating to TAPS, BLM will send you a written statement seeking reimbursement of actual costs within 60 calendar days after the close of each quarter. Quarters end on the last day of March, June, September, and December. In processing applications and administering authorizations relating to



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TAPS, the Department of the Interior will avoid unnecessary employment of personnel and needless expenditure of funds.

### **§ 2884.13 Who is exempt from paying processing and monitoring fees?**

You are exempt from paying processing and monitoring fees if you are a state or local government or an agency of such a government and BLM issues the grant for governmental purposes benefitting the general public. If your principal source of revenue results from charges you levy on customers for services similar to those of a profit-making corporation or business, you are not exempt.

### **§ 2884.14 When does BLM reevaluate the processing and monitoring fees?**

BLM reevaluates the processing and monitoring fees (*see* § 2885.23 of this part) for each category and the categories themselves within 5 years after they go into effect and at 10-year intervals after that. When reevaluating processing and monitoring fees, BLM considers all factors that affect the fees, including, but not limited to, any changes in:

- (a) Technology;
- (b) The procedures for processing applications and monitoring grants;
- (c) Statutes and regulations relating to the right-of-way program; or
- (d) The IPD-GDP.

### **§ 2884.15 What is a Master Agreement (Processing Category 5) and what information must I provide to BLM when I request one?**

(a) A Master Agreement (Processing Category 5) is a written agreement covering processing and monitoring fees (*see* § 2885.23 of this part) negotiated between BLM and you that involves multiple BLM grant or TUP approvals for projects within a defined geographic area.

(b) Your request for a Master Agreement must:

- (1) Describe the geographic area covered by the Agreement and the scope of the activity you plan;
- (2) Include a preliminary work plan. This plan must state what work you must do and what work BLM must do to process your application. Both par-

ties must periodically update the work plan, as specified in the Agreement, and mutually agree to the changes;

(3) Contain a preliminary cost estimate and a timetable for processing the application and completing the project;

(4) State whether you want the Agreement to apply to future applications in the same geographic area that are not part of the same project(s); and

(5) Contain any other relevant information that BLM needs to process the application.

### **§ 2884.16 What provisions do Master Agreements contain and what are their limitations?**

(a) A Master Agreement:

(1) Specifies that you must comply with all applicable laws and regulations;

(2) Describes the work you will do and the work BLM will do to process the application;

(3) Describes the method of periodic billing, payment, and auditing;

(4) Describes the processes, studies, or evaluations you will pay for;

(5) Explains how BLM will monitor the grant and how BLM will recover monitoring costs;

(6) Contains provisions allowing for periodic review and updating, if required;

(7) Contains specific conditions for terminating the Agreement; and

(8) Contains any other provisions BLM considers necessary.

(b) BLM will not enter into any Agreement that is not in the public interest.

### **§ 2884.17 How will BLM process my Processing Category 6 application?**

(a) For Processing Category 6 applications, you and BLM must enter into a written agreement that describes how BLM will process your application. The final agreement consists of a work plan and a financial plan.

(b) In processing your application, BLM will:

(1) Determine the issues subject to analysis under NEPA;

(2) Prepare a preliminary work plan;

(3) Develop a preliminary financial plan, which estimates the actual costs

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of processing your application and monitoring your project;

(4) Discuss with you:

(i) The preliminary plans and data;

(ii) The availability of funds and personnel;

(iii) Your options for the timing of processing and monitoring fee payments; and

(iv) Financial information you must submit; and

(5) Complete final scoping and develop final work and financial plans which reflect any work you have agreed to do. BLM will also present you with the final estimate of the costs you must reimburse the United States, including the cost for monitoring the project.

(c) BLM retains the option to prepare any environmental documents related to your application. If BLM allows you to prepare any environmental documents and conduct any studies that BLM needs to process your application, you must do the work following BLM standards. For this purpose, you and BLM may enter into a written agreement. BLM will make the final determinations and conclusions arising from such work.

(d) BLM will periodically, as stated in the agreement, estimate processing costs for a specific work period and notify you of the amount due. You must pay the amount due before BLM will continue working on your application. If your payment exceeds the costs that the United States incurred for the work, BLM will either adjust the next billing to reflect the excess, or refund you the excess under 43 U.S.C. 1734. You may not deduct any amount from a payment without BLM's prior written approval.

#### § 2884.18 What if there are two or more competing applications for the same pipeline?

(a) If there are two or more competing applications for the same pipeline and your application is in:

(1) *Processing Categories 1 through 4.* You must reimburse BLM for processing costs as if the other application or applications had not been filed.

(2) *Processing Category 6.* You are responsible for processing costs identified in your application. If BLM cannot

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readily separate costs, such as costs associated with preparing environmental analyses, you and any competing applicants must pay an equal share or a proportion agreed to in writing among all applicants and BLM. If you agree to share costs that are common to your application and that of a competing applicant, and the competitor does not pay the agreed upon amount, you are liable for the entire amount due. The applicants must pay the entire processing fee in advance. BLM will not process the application until we receive the advance payments.

(b) *Who determines whether competition exists?* BLM determines whether the applications are compatible in a single right-of-way or are competing applications to build the same pipeline.

(c) If BLM determines that competition exists, BLM will describe the procedures for a competitive bid through a bid announcement in a newspaper of general circulation in the area affected by the potential right-of-way and by a notice in the FEDERAL REGISTER.

#### § 2884.19 Where do I file my application for a grant or TUP?

(a) If BLM has exclusive jurisdiction over the lands involved, file your application with the BLM Field Office having jurisdiction over the lands described in the application.

(b) If another Federal agency has exclusive jurisdiction over the land involved, file your application with that agency and refer to its regulations for its requirements.

(c) If there are no BLM-administered lands involved, but the lands are under the jurisdiction of two or more Federal agencies, you may file your application at the BLM office in the vicinity of the pipeline. BLM will notify you where to direct future communications about the pipeline.

(d) If two or more Federal agencies, including BLM, have jurisdiction over the lands in the application, file it at any BLM office having jurisdiction over a portion of the Federal lands. BLM will notify you where to direct future communications about the pipeline.

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**§ 2884.20 What are the public notification requirements for my application?**

(a) When BLM receives your application, it will publish a notice in the FEDERAL REGISTER or a newspaper of general circulation in the vicinity of the lands involved. If BLM determines the pipeline(s) will have only minor environmental impacts, it is not required to publish this notice. The notice will, at a minimum, contain:

- (1) A description of the pipeline system; and
  - (2) A statement of where the application and related documents are available for review.
- (b) BLM will send copies of the published notice for review and comment to the:
- (1) Governor of each state within which the pipeline system would be located;
  - (2) Head of each local or tribal government or jurisdiction within which the pipeline system would be located; and
  - (3) Heads of other Federal agencies whose jurisdiction includes lands with-

in which the pipeline system would be located.

(c) If your application involves a pipeline that is 24 inches or more in diameter, BLM will also send notice of the application to the appropriate committees of Congress in accordance with 30 U.S.C. 185(w).

(d) BLM may hold public hearings or meetings on your application if we determine there is sufficient interest to warrant the time and expense of such hearings or meetings. BLM will publish a notice of any such hearings or meetings in advance in the FEDERAL REGISTER or in a newspaper of general circulation in the vicinity of the lands involved.

**§ 2884.21 How will BLM process my application?**

(a) BLM will notify you in writing when it receives your application and will identify your processing fee described at § 2884.12 of this subpart.

(b) *Customer service standard.* BLM will process your completed application as follows:

Processing category	Processing time	Conditions
1-4 .....	60 calendar days .....	If processing your application will take longer than 60 calendar days, BLM will notify you in writing of this fact prior to the 30th calendar day and inform you of when you can expect a final decision on your application.
5 .....	As specified in the Master Agreement.	BLM will process applications as specified in the Agreement.
6 .....	Over 60 calendar days .....	BLM will notify you in writing within the initial 60 day processing period of the estimated processing time.

(c) Before issuing a grant or TUP, BLM will:

- (1) Complete a NEPA analysis for the application or approve a NEPA analysis previously completed for the application, as required by 40 CFR parts 1500 through 1508;
- (2) Determine whether or not your proposed use complies with applicable Federal and state laws, regulations, and local ordinances;
- (3) Consult, as necessary, with other governmental entities;
- (4) Hold public meetings, if sufficient public interest exists to warrant their time and expense. BLM will publish a notice in the FEDERAL REGISTER, a newspaper of general circulation in the vicinity of the lands involved, or both,

announcing in advance any public hearings or meetings; and

- (5) Take any other action necessary to fully evaluate and decide whether to approve or deny your application.

**§ 2884.22 Can BLM ask me for additional information?**

(a) If we ask for additional information we will follow the procedures in § 2804.25(b) of this chapter.

(b) BLM may also ask other Federal agencies for additional information, for terms and conditions or stipulations which the grant or TUP should contain, and for advice as to whether or not to issue the grant or TUP.

**§ 2884.23****§ 2884.23 Under what circumstances may BLM deny my application?**

(a) BLM may deny your application if:

(1) The proposed use is inconsistent with the purpose for which BLM or other Federal agencies manage the lands described in your application;

(2) The proposed use would not be in the public interest;

(3) You are not qualified to hold a grant or TUP;

(4) Issuing the grant or TUP would be inconsistent with the Act, other laws, or these or other regulations;

(5) You do not have or cannot demonstrate the technical or financial capability to construct the pipeline or operate facilities within the right-of-way or TUP area; or

(6) You do not adequately comply with a deficiency notice (see § 2804.25(b) of this chapter) or with any BLM requests for additional information needed to process the application.

(b) If BLM denies your application, you may appeal the decision under § 2881.10 of this part.

**§ 2884.24 What fees do I owe if BLM denies my application or if I withdraw my application?**

If BLM denies your application, or you withdraw it, you owe the processing fee set forth at § 2884.12(b) of this subpart, unless you have a Processing Category 5 or 6 application. Then, the following conditions apply:

(a) If BLM denies your Processing Category 5 or 6 application, you are liable for all actual costs that the United States incurred in processing it. The money you have not paid is due within 30 calendar days after receiving a bill for the amount due; and

(b) You may withdraw your application in writing before BLM issues a grant or TUP. If you do so, you are liable for all actual processing costs the United States has incurred up to the time you withdraw the application and for the actual costs of terminating your application. Any money you have not paid is due within 30 calendar days after receiving a bill for the amount due.

**§ 2884.25 What activities may I conduct on BLM lands covered by my application for a grant or TUP while BLM is processing my application?**

(a) You may conduct casual use activities on BLM lands covered by the application, as may any other member of the public. BLM does not require a grant or TUP for casual use on BLM lands.

(b) For any activities on BLM lands that are not casual use, you must obtain prior BLM approval. To conduct activities on lands administered by other Federal agencies, you must obtain any prior approval those agencies require.

**§ 2884.26 When will BLM issue a grant or TUP when the lands are managed by two or more Federal agencies?**

If the application involves lands managed by two or more Federal agencies, BLM will not issue or renew the grant or TUP until the heads of the agencies administering the lands involved have concurred. Where concurrence is not reached, the Secretary of the Interior, after consultation with these agencies, may issue or renew the grant or TUP, but not through lands within a Federal reservation where doing so would be inconsistent with the purposes of the reservation.

**§ 2884.27 What additional requirement is necessary for grants or TUPs for pipelines 24 or more inches in diameter?**

If an application is for a grant or TUP for a pipeline 24 inches or more in diameter, BLM will not issue or renew the grant or TUP until after we notify the appropriate committees of Congress in accordance with 30 U.S.C. 185(w).

**Subpart 2885—Terms and Conditions of MLA Grants and TUPs****§ 2885.10 When is a grant or TUP effective?**

A grant or TUP is effective after both you and BLM sign it. You must accept its terms and conditions in writing and pay any necessary rent and monitoring

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fees as set out in §§ 2885.19 and 2885.23 of this subpart. Your written acceptance constitutes an agreement between you and the United States that your right to use the Federal lands, as specified in the grant or TUP, is subject to the terms and conditions of the grant or TUP and applicable laws and regulations.

### § 2885.11 What terms and conditions must I comply with?

(a) *Duration.* All grants with a term of one year or longer will terminate on December 31 of the final year of the grant. The term of a grant may not exceed 30 years. The term of a TUP may not exceed 3 years. BLM will consider the following factors in establishing a reasonable term:

(1) The cost of the pipeline and related facilities you plan to construct, operate, maintain, or terminate;

(2) The pipeline's or related facility's useful life;

(3) The public purpose served; and

(4) Any potentially conflicting land uses; and

(b) *Terms and conditions of use.* BLM may modify your proposed use or change the route or location of the facilities in your application. By accepting a grant or TUP, you agree to use the lands described in the grant or TUP for the purposes set forth in the grant or TUP. You also agree to comply with, and be bound by, the following terms and conditions. During construction, operation, maintenance, and termination of the project you must:

(1) To the extent practicable, comply with all existing and subsequently enacted, issued, or amended Federal laws and regulations, and state laws and regulations applicable to the authorized use;

(2) Rebuild and repair roads, fences, and established trails destroyed or damaged by constructing, operating, maintaining, or terminating the project;

(3) Build and maintain suitable crossings for existing roads and significant trails that intersect the project;

(4) Do everything reasonable to prevent and suppress fires on or in the immediate vicinity of the right-of-way or TUP area;

(5) Not discriminate against any employee or applicant for employment during any phase of the project because of race, creed, color, sex, or national origin. You must also require subcontractors to not discriminate;

(6) Pay the rent and monitoring fees described in §§ 2885.19 and 2885.23 of this subpart;

(7) If BLM requires, obtain and/or certify that you have obtained a surety bond or other acceptable security to cover any losses, damages, or injury to human health, the environment, and property incurred in connection with your use and occupancy of the right-of-way or TUP area, including terminating the grant or TUP, and to secure all obligations imposed by the grant or TUP and applicable laws and regulations. Your bond must cover liability for damages or injuries resulting from releases or discharges of hazardous materials. BLM may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant or TUP. This bond is in addition to any individual lease, statewide, or nationwide oil and gas bonds you may have;

(8) Assume full liability if third parties are injured or damages occur to property on or near the right-of-way or TUP area (see § 2886.13 of this part);

(9) Comply with project-specific terms, conditions, and stipulations, including requirements to:

(i) Restore, revegetate, and curtail erosion or any other rehabilitation measure BLM determines is necessary;

(ii) Ensure that activities in connection with the grant or TUP comply with air and water quality standards or related facility siting standards contained in applicable Federal or state law or regulations;

(iii) Control or prevent damage to scenic, aesthetic, cultural, and environmental values, including fish and wildlife habitat, and to public and private property and public health and safety;

(iv) Protect the interests of individuals living in the general area who rely on the area for subsistence uses as that term is used in Title VIII of ANILCA (16 U.S.C. 3111 *et seq.*); and

(v) Ensure that you construct, operate, maintain, and terminate the facilities on the lands in the right-of-way or TUP area in a manner consistent with the grant or TUP;

(10) Immediately notify all Federal, state, tribal, and local agencies of any release or discharge of hazardous material reportable to such entity under applicable law. You must also notify BLM at the same time, and send BLM a copy of any written notification you prepared;

(11) Not dispose of or store hazardous material on your right-of-way or TUP area, except as provided by the terms, conditions, and stipulation of your grant or TUP;

(12) Certify that your compliance with all requirements of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*, when you receive, assign, renew, amend, or terminate your grant or TUP;

(13) Control and remove any release or discharge of hazardous material on or near the right-of-way or TUP area arising in connection with your use and occupancy of the right-of-way or TUP area, whether or not the release or discharge is authorized under the grant or TUP. You must also remediate and restore lands and resources affected by the release or discharge to BLM's satisfaction and to the satisfaction of any other Federal, state, tribal, or local agency having jurisdiction over the land, resource, or hazardous material;

(14) Comply with all liability and indemnification provisions and stipulations in the grant or TUP;

(15) As BLM directs, provide diagrams or maps showing the location of any constructed facility;

(16) Construct, operate, and maintain the pipeline as a common carrier. This means that the pipeline owners and operators must accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to where the oil and gas was produced (*i.e.*, whether on Federal or non-federal lands). Where natural gas not subject to state regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company must

purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline. Common carrier provisions of this paragraph do not apply to natural gas pipelines operated by a:

(i) Person subject to regulation under the Natural Gas Act (15 U.S.C. 717 *et seq.*); or

(ii) Public utility subject to regulation by state or municipal agencies with the authority to set rates and charges for the sale of natural gas to consumers within the state or municipality.

(17) Within 30 calendar days after BLM requests it, file rate schedules and tariffs for oil and gas, or derivative products, transported by the pipeline as a common carrier with the agency BLM prescribes, and provide BLM proof that you made the required filing;

(18) With certain exceptions (listed in the statute), not export domestically produced crude oil by pipeline without Presidential approval (*see* 30 U.S.C. 185(u) and (s) and 50 U.S.C. App. 2401);

(19) Not exceed the right-of-way width that is specified in the grant without BLM's prior written authorization. If you need a right-of-way wider than 50 feet plus the ground occupied by the pipeline and related facilities, *see* § 2885.14 of this subpart;

(20) Not use the right-of-way or TUP area for any use other than that authorized by the grant or TUP. If you require other pipelines, looping lines, or other improvements not authorized by the grant or TUP, you must first secure BLM's written authorization;

(21) Not use or construct on the land in the right-of-way or TUP area until:

(i) BLM approves your detailed plan for construction, operation, and termination of the pipeline, including provisions for rehabilitation of the right-of-way or TUP area and environmental protection; and

(ii) You receive a Notice to Proceed for all or any part of the right-of-way or TUP area. In certain situations BLM may waive this requirement in writing; and

(22) Comply with all other stipulations that BLM may require.

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### § 2885.12 What rights does a grant or TUP convey?

The grant or TUP conveys to you only those rights which it expressly contains. BLM issues it subject to the valid existing rights of others, including the United States. Rights which the grant or TUP conveys to you include the right to:

- (a) Use the described lands to construct, operate, maintain, and terminate facilities within the right-of-way or TUP area for authorized purposes under the terms and conditions of the grant or TUP;
- (b) Allow others to use the land as your agent in the exercise of the rights that the grant or TUP specifies;
- (c) Do minor trimming, pruning, and removing of vegetation to maintain the right-of-way or TUP area or facility;
- (d) Use common varieties of stone and soil which are necessarily removed during construction of the pipeline, without additional BLM authorization or payment, in constructing the pipeline within the authorized right-of-way or TUP area; and
- (e) Assign the grant or TUP to another, provided that you obtain BLM's prior written approval.

### § 2885.13 What rights does the United States retain?

The United States retains and may exercise any rights the grant or TUP does not expressly convey to you. These include the United States' right to:

- (a) Access the lands covered by the grant or TUP at any time and enter any facility you construct on the right-of-way or TUP area. BLM will give you reasonable notice before it enters any facility on the right-of-way or TUP area;
- (b) Require common use of your right-of-way or TUP area, including subsurface and air space, and authorize use of the right-of-way or TUP area for compatible uses. You may not charge for the use of the lands made subject to such additional right-of-way grants;
- (c) Retain ownership of the resources of the land covered by the grant or TUP, including timber and vegetative or mineral materials and any other living or non-living resources. You have

no right to use these resources, except as noted in § 2885.12 of this subpart;

- (d) Determine whether or not your grant is renewable; and
- (e) Change the terms and conditions of your grant or TUP as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment.

### § 2885.14 What happens if I need a right-of-way wider than 50 feet plus the ground occupied by the pipeline and related facilities?

- (a) You may apply to BLM at any time for a right-of-way wider than 50 feet plus the ground occupied by the pipeline and related facilities. In your application you must show that the wider right-of-way is necessary to:
  - (1) Properly operate and maintain the pipeline after you have constructed it;
  - (2) Protect the environment; or
  - (3) Provide for public safety.
- (b) BLM will notify you in writing of its finding(s) and its decision on your application for a wider right-of-way. If the decision is adverse to you, you may appeal it under § 2881.10 of this part.

### § 2885.15 How will BLM charge me rent?

- (a) BLM will charge rent beginning on the first day of the month following the effective date of the grant or TUP through the last day of the month when the grant or TUP terminates. *Example:* If a grant or TUP becomes effective on January 10 and terminates on September 16, the rental period would be February 1 through September 30, or 8 months.
- (b) There are no reductions or waivers of rent for grants or TUPs.
- (c) BLM will set or adjust the annual billing periods to coincide with the calendar year by prorating the rent based on 12 months.
- (d) If you disagree with the rent that BLM charges, you may appeal the decision under § 2881.10 of this part.

### § 2885.16 When do I pay rent?

- (a) You must pay rent for the initial rental period before BLM issues you a grant or TUP.

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(b) You make all other rental payments according to the payment plan described in § 2885.21 of this subpart.

(c) After the first rental payment, all rent is due on January 1 of the first year of each succeeding rental period for the term of your grant.

### **§ 2885.17 What happens if I pay the rent late?**

(a) If BLM does not receive the rent payment within 15 calendar days after the rent was due under § 2885.16 of this subpart, BLM will charge you a late payment fee of \$25.00 or 10 percent of the rent you owe, whichever is greater, not to exceed \$500 per authorization.

(b) If BLM does not receive your rent payment and late payment fee within 30 calendar days after rent was due, BLM may collect other administrative fees provided by statute.

(c) If BLM does not receive your rent, late payment fee, and any administrative fees within 90 calendar days after the rent was due, BLM may terminate your grant under § 2886.17 of this part and you may not remove any facility or equipment without BLM's written permission. The rent due, late payment fees, and any administrative fees remain a debt that you owe to the United States.

(d) If you pay the rent, late payment fees, and any administrative fees after BLM has terminated the grant, BLM does not automatically reinstate the grant. You must file a new application with BLM. BLM will consider the history of your failure to timely pay rent in deciding whether to issue you a new grant.

(e) You may appeal any adverse decision BLM takes against your grant or TUP under § 2881.10 of this part.

### **§ 2885.18 When must I make estimated rent payments to BLM?**

To expedite the processing of your application for a grant or TUP, BLM may estimate rent payments and require you to pay that amount when it issues the grant or TUP. The rent amount may change once BLM determines the actual rent of the grant or TUP. BLM will credit you any rental overpayment, and you are liable for any underpayment. This section does

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not apply to rent payments made under the rent schedule in this part.

### **§ 2885.19 What is the rent for a linear right-of-way?**

(a) Except as noted in paragraph (b) of this section, BLM will use the Per Acre Rent Schedule at § 2806.20(b) of this chapter to calculate the rent. The Per Acre Rent Schedule is updated annually in accordance with § 2806.21 of this chapter.

(b) BLM may determine your rent using the methods described in § 2806.50 of this chapter, rather than by using the rent schedule cited in paragraph (a) of this section if the rent determined by comparable commercial practices or an appraisal would be 10 or more times the rent from the schedule.

(c) Once you are on a rent schedule, BLM will not remove you from it, unless:

(1) The BLM State Director decides to remove you from the schedule under paragraph (b) of this section; or

(2) You file an application to amend your grant.

(d) You may obtain the current linear right-of-way rent schedule from any BLM state or field office or by writing: Director, BLM, 1849 C St., NW., Mail Stop 1000 LS, Washington, DC 20240. BLM also posts the current rent schedule on the BLM Homepage on the Internet at <http://www.blm.gov>.

### **§ 2885.20 How will BLM calculate my rent for linear rights-of-way the schedule covers?**

(a) BLM calculates your rent by multiplying the rent per acre for the appropriate category of use and county zone price from the current schedule by the number of acres in the right-of-way or TUP area that fall in those categories and multiplying the result by the number of years in the rental period.

(b) If BLM has not previously used the rent schedule to calculate your rent, we may do so after giving you reasonable written notice.

### **§ 2885.21 How must I make rent payments for my grant or TUP?**

(a) For TUPs you must make a one-time nonrefundable payment for the term of the TUP. For grants, you must



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make either nonrefundable annual payments or nonrefundable payments for more than 1 year, as follows:

(1) *One-time payments.* You may pay in advance the required rent amount for the entire term of the grant.

(2) If you choose not to make a one-time payment, you must pay according to one of the following methods, as applicable:

(i) *Payments by individuals.* If your annual rent is \$100 or less, you must pay at 10-year intervals not to exceed the term of the grant. If your annual rent is greater than \$100, you may pay annually or at multi-year intervals that you may choose.

(ii) *Payments by all others.* You must pay rent in advance at ten-year intervals not to exceed the term of the grant.

(b) BLM considers the first partial calendar year in the rent payment period to be the first year of the rental payment term. BLM prorates the first year rental amount based on the number of months left in the calendar year after the effective date of the grant.

### § 2885.22 How will BLM calculate rent for communication uses ancillary to a linear grant, TUP, or other use authorization?

When a communication use is ancillary to, and authorized by BLM under, a grant or TUP for a linear use, or some other type of authorization (*e.g.*, a mineral lease or sundry notice), BLM will determine the rent using the linear rent schedule (*see* § 2885.19 of this subpart) or rent scheme associated with the other authorization, and not the communication use rent schedule (*see* § 2806.30 of this chapter).

### § 2885.23 If I hold a grant or TUP, what monitoring fees must I pay?

(a) *Monitoring fees.* Subject to § 2886.11 of this part, you must pay a fee to BLM for any costs the Federal Government incurs in monitoring the construction, operation, maintenance, and termination of the pipeline and protection and rehabilitation of the affected Federal lands your grant or TUP covers. BLM categorizes the monitoring fees based on the estimated number of work hours necessary to monitor your grant or TUP. Category 1 through 4 monitoring fees are one-time fees and are not refundable. The work hours and fees for 2005 are as follows:

2005 MONITORING FEE SCHEDULE

Monitoring category	Federal work hours involved	Monitoring fee as of June 21, 2005. To be adjusted annually for changes in the IPD-GDP. See paragraph (b) of this section for update information
(1) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours are > 1 ≤ 8.	\$97.
(2) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours are > 8 ≤ 24.	\$343.
(3) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours are > 24 ≤ 36.	\$644.
(4) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours are > 36 ≤ 50.	\$923.
(5) Master Agreements .....	Varies .....	As specified in the Agreement.
(6) Applications for new grants and TUPs, assignments, renewals, and amendments to existing grants and TUPs.	Estimated Federal work hours > 50..	Actual costs.

(b) *Updating the schedule.* BLM will revise paragraph (a) of this section annually to update Category 1 through 4 monitoring fees in the manner described at § 2884.12(c) of this part. BLM

will update Category 5 monitoring fees as specified in the Master Agreement. The monitoring cost schedule is available from any BLM state or field office or by writing: Director, Bureau of Land

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Management, 1849 C St., NW., Mail Stop 1000LS, Washington, DC 20240. BLM also posts the current schedule on the BLM Homepage on the Internet at <http://www.blm.gov>.

### § 2885.24 When do I pay monitoring fees?

(a) *Monitoring Categories 1 through 4.* Unless BLM otherwise directs, you must pay monitoring fees when you submit to BLM your written acceptance of the terms and conditions of the grant or TUP.

(b) *Monitoring Category 5.* You must pay the monitoring fees as specified in the Master Agreement. BLM will not issue your grant or TUP until it receives the required payment.

(c) *Monitoring Category 6.* BLM may periodically estimate the costs of monitoring your use of the grant or TUP. BLM will include this fee in the costs associated with processing fees described at § 2884.12 of this part. If BLM has underestimated the monitoring costs, we will notify you of the shortfall. If your payments exceed the actual costs that Federal employees incurred for monitoring, BLM will either reimburse you the difference, or adjust the next billing to reflect the overpayment. Unless BLM gives you written authorization, you may not offset or deduct the overpayment from your payments.

(d) *Monitoring Categories 1–4 and 6.* If you disagree with the category BLM has determined for your application, you may appeal the decision under § 2881.10 of this part.

## Subpart 2886—Operations on MLA Grants and TUPs

### § 2886.10 When can I start activities under my grant or TUP?

(a) When you can start depends on the terms of your grant or TUP. You can start activities when you receive the grant or TUP you and BLM signed, unless the grant or TUP includes a requirement for BLM to provide a written Notice to Proceed. If your grant or TUP contains a Notice to Proceed requirement, you may not initiate construction, operation, maintenance, or termination until BLM issues you a Notice to Proceed.

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(b) Before you begin operating your pipeline or related facility authorized by a grant or TUP, you must certify in writing to BLM that the pipeline system:

(1) Has been constructed and tested according to the terms of the grant or TUP; and

(2) Is in compliance with all required plans, specifications, and Federal and state laws and regulations.

### § 2886.11 Who regulates activities within my right-of-way or TUP area?

After BLM has issued the grant or TUP, the head of the agency having administrative jurisdiction over the Federal lands involved will regulate your grant or TUP activities in conformance with the Act, appropriate regulations, and the terms and conditions of the grant or TUP. BLM and the other agency head may reach another agreement under 30 U.S.C. 185(c).

### § 2886.12 When must I contact BLM during operations?

You must contact BLM:

(a) At the times specified in your grant or TUP;

(b) When your use requires a substantial deviation from the grant or TUP. You must obtain BLM's approval before you begin any activity that is a substantial deviation;

(c) When there is a change affecting your application, grant, or TUP including, but not limited to changes in:

(1) Mailing address;

(2) Partners;

(3) Financial conditions; or

(4) Business or corporate status; and

(d) When BLM requests it, such as to update information or confirm that information you submitted before is accurate.

### § 2886.13 If I hold a grant or TUP, for what am I liable?

(a) If you hold a grant or TUP, you are liable to the United States and to third parties for any damage or injury they incur in connection with your use and occupancy of the right-of-way or TUP area.

(b) You are strictly liable for any activity or facility associated with your right-of-way or TUP area which BLM

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determines presents a foreseeable hazard or risk of damage or injury to the United States. BLM will specify in the grant or TUP any activity or facility posing such hazard or risk, and the financial limitations on damages commensurate with such hazard or risk.

(1) BLM will not impose strict liability for damage or injury resulting primarily from an act of war or the negligence of the United States, except as otherwise provided by law.

(2) As used in this section, strict liability extends to costs incurred by the Federal government to control or abate conditions, such as fire or oil spills, which threaten life, property, or the environment, even if the threat occurs to areas that are not under Federal jurisdiction. This liability is separate and apart from liability under other provisions of law.

(3) You are strictly liable to the United States for damage or injury up to \$2 million for any one incident. BLM will update this amount annually to adjust for changes in the Consumer Price Index for All Urban Consumers, U.S. City Average (CPI-U) as of July of each year (difference in CPI-U from July of one year to July of the following year), rounded to the nearest \$1,000. This financial limitation does not apply to the release or discharge of hazardous substances on or near the grant or TUP area, or where liability is otherwise not subject to this financial limitation under applicable law.

(4) BLM will determine your liability for any amount in excess of the \$2 million strict liability limitation (as adjusted) through the ordinary rules of negligence.

(5) The rules of subrogation apply in cases where a third party caused the damage or injury.

(c) If you cannot satisfy claims for injury or damage, all owners of any interests in, and all affiliates or subsidiaries of any holder of, a grant or TUP, except for corporate stockholders, are jointly and severally liable to the United States.

(d) If BLM issues a grant or TUP to more than one holder, each is jointly and severally liable.

(e) By accepting the grant or TUP, you agree to fully indemnify or hold the United States harmless for liability,

damage, or claims arising in connection with your use and occupancy of the right-of-way or TUP area.

(f) We address liability of state, tribal, and local governments in § 2886.14 of this subpart.

(g) The provisions of this section do not limit or exclude other remedies.

### **§ 2886.14 As grant or TUP holders, what liabilities do state, tribal, and local governments have?**

(a) If you are a state, tribal, or local government or its agency or instrumentality, you are liable to the fullest extent law allows at the time that BLM issues your grant or TUP. If you do not have the legal power to assume full liability, you must repair damages or make restitution to the fullest extent of your powers.

(b) BLM may require you to provide a bond, insurance, or other acceptable security to:

(1) Protect the liability exposure of the United States to claims by third parties arising out of your use and occupancy of the right-of-way or TUP area;

(2) Cover any losses, damages, or injury to human health, the environment, and property incurred in connection with your use and occupancy of the right-of-way or TUP area; and

(3) Cover any damages or injuries resulting from the release or discharge of hazardous materials incurred in connection with your use and occupancy of the right-of-way or TUP area.

(c) Based on your record of compliance and changes in risk and conditions, BLM may require you to increase or decrease the amount of your bond, insurance, or security.

(d) The provisions of this section do not limit or exclude other remedies.

### **§ 2886.15 How is grant or TUP administration affected if the BLM land my grant or TUP encumbers is transferred to another Federal agency or out of Federal ownership?**

(a) If there is a proposal to transfer the BLM land your grant or TUP encumbers to another Federal agency, BLM may, after reasonable notice to you, transfer administration of your grant or TUP, for the lands BLM formerly administered, to another Federal

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agency, unless doing so would diminish your rights. If BLM determines your rights would be diminished by such a transfer, BLM can still transfer the land, but retain administration of your grant or TUP under existing terms and conditions.

(b) If there is a proposal to transfer the BLM land your grant or TUP encumbers out of Federal ownership, BLM may, after reasonable notice to you and in conformance with existing policies and procedures:

(1) Transfer the land subject to your grant or TUP. In this case, administration of your grant or TUP, for the lands BLM formerly administered, is transferred to the new owner of the land;

(2) Transfer the land, but BLM retains administration of your grant or TUP; or

(3) Reserve to the United States the land your grant or TUP encumbers, and BLM retains administration of your grant or TUP.

(c) BLM or, if BLM no longer administers the land, the new land owner may negotiate new grant or TUP terms and conditions with you.

## § 2886.16 Under what conditions may BLM order an immediate temporary suspension of my activities?

(a) Subject to § 2886.11, BLM can order an immediate temporary suspension of grant or TUP activities within the right-of-way or TUP area to protect public health or safety or the environment. BLM can require you to stop your activities before holding an administrative proceeding on the matter and may order immediate remedial action.

(b) BLM may issue the immediate temporary suspension order orally or in writing to you, your contractor or subcontractor, or to any representative, agent, or employee representing you or conducting the activity. BLM may take this action whether or not any action is being or has been taken by other Federal or state agencies. When you receive the order, you must stop the activity immediately. BLM will, as soon as practical, confirm an oral order by sending or hand delivering to you or your agent at your ad-

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dress a written suspension order explaining the reasons for it.

(c) You may file a written request for permission to resume activities at any time after BLM issues the order. In the request, give the facts supporting your request and the reasons you believe that BLM should lift the order. BLM must grant or deny your request within 5 business days after receiving it. If BLM does not respond within 5 business days, BLM has denied your request. You may appeal the denial under § 2881.10 of this part.

(d) The immediate temporary suspension order is effective until you receive BLM's written notice to proceed with your activities.

## § 2886.17 Under what conditions may BLM suspend or terminate my grant or TUP?

(a) Subject to § 2886.11, BLM may suspend or terminate your grant if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the grant, or if you abandon the right-of-way.

(b) Subject to § 2886.11, BLM may suspend or terminate your TUP if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the TUP, or if you abandon the TUP area.

(c) A grant or TUP also terminates when:

(1) The grant or TUP contains a term or condition that has been met that requires the grant or TUP to terminate;

(2) BLM consents in writing to your request to terminate the grant or TUP; or

(3) It is required by law to terminate.

(d) Your failure to use your right-of-way for its authorized purpose for any continuous 2-year period creates a presumption of abandonment. BLM will notify you in writing of this presumption. You may rebut the presumption of abandonment by proving that you used the right-of-way or that your failure to use the right-of-way was due to circumstances beyond your control, such as acts of God, war, or casualties not attributable to you.

(e) You may appeal a decision under this section under § 2881.10 of this part.

**§ 2886.18 How will I know that BLM intends to suspend or terminate my grant or TUP?**

(a) *Grants.* When BLM determines that it will suspend or terminate your grant under § 2886.17 of this subpart, it will send you a written notice of this determination. The determination will provide you a reasonable opportunity to correct the violation, start your use, or resume your use of the right-of-way, as appropriate. In the notice BLM will state the date by which you must correct the violation or start or resume use of the right-of-way.

(1) If you have not corrected the violation or started or resumed use of the right-of-way by the date specified in the notice, BLM will refer the matter to the Office of Hearings and Appeals. An ALJ in the Office of Hearings and Appeals will provide an appropriate administrative proceeding under 5 U.S.C. 554 and determine whether grounds for suspension or termination exist. No administrative proceeding is required where the grant by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

(2) BLM will suspend or terminate the grant if the ALJ determines that grounds exist for suspension or termination and the suspension or termination is justified.

(b) *TUPs.* When BLM determines that it will suspend or terminate your TUP, it will send you a written notice and provide you a reasonable opportunity to correct the violation or start or resume use of the TUP area. The notice will also provide you information on how to file a written request for reconsideration.

(1) You may file a written request with the BLM office that issued the notice, asking for reconsideration of the determination to suspend or terminate your TUP. BLM must receive this request within 10 business days after you receive the notice.

(2) BLM will provide you with a written decision within 20 business days after receiving your request for reconsideration. The decision will include a finding of fact made by the next higher level of authority than that who made the suspension or termination determination. The decision will also inform

you whether BLM suspended or terminated your TUP or cancelled the notice made under paragraph (b) of this section.

(3) If the decision is adverse to you, you may appeal it under § 2881.10 of this part.

**§ 2886.19 When my grant or TUP terminates, what happens to any facilities on it?**

(a) Subject to § 2886.11, after your grant or TUP terminates, you must remove any facilities within the right-of-way or TUP area within a reasonable time, as determined by BLM, unless BLM instructs you otherwise in writing, or termination is due to non-payment of rent (see § 2885.17(c) of this part).

(b) After removing the facilities, you must remediate and restore the right-of-way or TUP area to a condition satisfactory to BLM, including the removal and clean-up of any hazardous materials.

(c) If you do not remove all facilities within a reasonable period, as determined by BLM, BLM may declare them to be the property of the United States. However, you are still liable for the costs of removing them and for remediating and restoring the right-of-way or TUP area.

**Subpart 2887—Amending, Assigning, or Renewing MLA Grants and TUPs****§ 2887.10 When must I amend my application, seek an amendment of my grant or TUP, or obtain a new grant or TUP?**

(a) You must amend your application or seek an amendment of your grant or TUP when there is a proposed substantial deviation in location or use.

(b) The requirements to amend an application or a grant or TUP are the same as those for a new application, including paying processing and monitoring fees and rent according to §§ 2884.12, 2885.23, 2885.19, and 2886.11 of this part.

(c) Any activity not authorized by your grant or TUP may subject you to prosecution under applicable law and to trespass charges under subpart 2888 of this part.

#### **§ 2887.11**

(d) Notwithstanding paragraph (a) of this section, if you hold a pipeline grant issued before November 16, 1973, and there is a proposed substantial deviation in location or use of the right-of-way, you must apply for a new grant.

(e) BLM may ratify or confirm a grant that was issued before November 16, 1973, if we can modify the grant to comply with the Act and these regulations. BLM and you must jointly agree to any modification of a grant made under this paragraph.

#### **§ 2887.11 May I assign my grant or TUP?**

(a) With BLM's approval, you may assign, in whole or in part, any right or interest in a grant or TUP.

(b) In order to assign a grant or TUP, the proposed assignee, subject to § 2886.11 of this part, must file an application and satisfy the same procedures and standards as for a new grant or TUP, including paying processing fees (see § 2884.12 of this part).

(c) The assignment application must also include:

(1) Documentation that the assignor agrees to the assignment; and

(2) A signed statement that the proposed assignee agrees to comply with and to be bound by the terms and conditions of the grant or TUP that is being assigned, and all applicable laws and regulations.

(d) BLM will not recognize an assignment until we approve it in writing. BLM will approve the assignment if doing so is in the public interest. BLM may modify the grant or TUP or add bonding and other requirements, including terms and conditions, to the grant or TUP when approving the assignment. If BLM approves the assignment, the benefits and liabilities of the grant or TUP apply to the new grant or TUP holder.

(e) The processing time and conditions described at § 2884.21 of this part apply to assignment applications.

#### **§ 2887.12 How do I renew my grant?**

(a) You must apply to BLM to renew the grant at least 120 calendar days before your grant expires. BLM will renew the grant if the pipeline is being operated and maintained in accordance

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with the grant, these regulations, and the Act. If your grant has expired or terminated, you must apply for a new grant under subpart 2884 of this part.

(b) BLM may modify the terms and conditions of the grant at the time of renewal, and you must pay the processing fees (see § 2884.12 of this part) in advance.

(c) The time and conditions for processing applications for rights-of-way, as described at § 2884.21 of this part, apply to applications for renewals.

### **Subpart 2888—Trespass**

#### **§ 2888.10 What is trespass?**

(a) Trespass is using, occupying, or developing the public lands or their resources without a required authorization or in a way that is beyond the scope and terms and conditions of your authorization. Trespass is a prohibited act.

(b) Trespass includes acts or omissions causing unnecessary or undue degradation to the public lands or their resources. In determining whether such degradation is occurring, BLM may consider the effects of the activity on resources and land uses outside the area of the activity.

(c) BLM will administer trespass actions for grants and TUPs as set forth in §§ 2808.10(c), and 2808.11 of this chapter, except that the rental exemption provisions of part 2800 do not apply to grants issued under this part.

(d) Other Federal agencies will address trespass on non-BLM lands under their respective laws and regulations.

#### **§ 2888.11 May I receive a grant if I am or have been in trespass?**

Until you satisfy your liability for a trespass, BLM will not process any applications you have pending for any activity on BLM-administered lands. A history of trespass will not necessarily disqualify you from receiving a grant. In order to correct a trespass, you must apply under the procedures described at subpart 2884 of this part. BLM will process your application as if it were a new use. Prior unauthorized use does not create a preference for receiving a grant.